

1
2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 DEWAYNE A. WRIGHT,

12 Plaintiff,

13 v.

14 AMANDA, et al.,

15 Defendants.
16

No. 2:23-CV-1532-DMC

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

19 The Court is required to screen complaints brought by prisoners seeking relief
20 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
21 § 1915A(a). This provision also applies if the plaintiff was incarcerated at the time the action was
22 initiated even if the litigant was subsequently released from custody. See Olivas v. Nevada ex rel.
23 Dep't of Corr., 856 F.3d 1281, 1282 (9th Cir. 2017). The Court must dismiss a complaint or
24 portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can
25 be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See
26 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that
27 complaints contain a “. . . short and plain statement of the claim showing that the pleader is
28 entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply,

1 concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to
2 Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice
3 of the plaintiff's claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121,
4 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity
5 overt acts by specific defendants which support the claims, vague and conclusory allegations fail
6 to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening
7 required by law when the allegations are vague and conclusory.

8 9 **I. PLAINTIFF'S ALLEGATIONS**

10 Plaintiff names the following as defendants: (1) Amanda, a nurse practitioner; (2)
11 Tracy, a nurse; (3) Mendez, a corrections officer; (4) Gibson, a sergeant; and (5) Solano County
12 Jail. Id. at 2. Plaintiff Wright is housed at the Stanton Correctional Facility, where the alleged
13 violations took place. See id. at 1.

14 In Plaintiff's first claim, he alleges he was issued another inmate's medication.
15 See id. at 3. A few minutes after Plaintiff took the medication and the nurse left his unit, another
16 inmate noticed Plaintiff breathing heavily on his bunk. See id. The other inmate asked Plaintiff if
17 he was okay, to which Plaintiff replied "no." Id. Plaintiff asked the other inmate what
18 medication he takes. See id. The other inmate stated that he takes Adderall, which has side
19 effects of causing blood pressure spikes and dizziness. See id. Plaintiff began acting strangely
20 and his blood pressure spiked to high levels twenty minutes after taking the medication. Id.
21 Plaintiff blacked out. See id. Medical personnel were called to check Plaintiff's blood pressure
22 and subsequently transported him to NorthBay Health Medical Center in Fairfield. See id.
23 Plaintiff alleges injury from being given the wrong medication and having to be taken to a
24 hospital. See id.

25 In Plaintiff's second claim, he alleges Defendant Mendez violated his
26 constitutional rights by taunting and harassing him. See id. at 4. Plaintiff alleges he filed a
27 complaint against Defendant Mendez for unprofessionalism on July 12, 2023, and that the
28 allegations made in the complaint were substantiated. See id. Thereafter, Defendant Mendez

1 returned to Plaintiff's unit and continued to harass and taunt him. See id. Plaintiff found it
2 difficult to maintain himself. See id. Plaintiff alleges injury from being subjected to harassment
3 and high levels of stress. See id.

4 5 **II. DISCUSSION**

6 The Court finds that Plaintiff's complaint fails to state any cognizable claims.
7 Plaintiff's first claim is deficient because he does not indicate which of the named individual
8 defendants were responsible for providing Plaintiff with the wrong medication. Plaintiff's first
9 claim is also deficient because it appears the claim is based on negligence and not deliberate
10 indifference. Plaintiff's second claim is deficient because Plaintiff has not alleged facts which
11 show an Eighth Amendment violation arising from harassment. Finally, Plaintiff's claim against
12 Defendant Solano County Jail, which is a unit of the County of Solano, is deficient because
13 Plaintiff has not alleged facts to give rise to municipal liability.

14 **A. Causal Link**

15 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual
16 connection or link between the actions of the named defendants and the alleged deprivations. See
17 Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A
18 person 'subjects' another to the deprivation of a constitutional right, within the meaning of
19 § 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform
20 an act which he is legally required to do that causes the deprivation of which complaint is made."
21 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations
22 concerning the involvement of official personnel in civil rights violations are not sufficient. See
23 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth
24 specific facts as to each individual defendant's causal role in the alleged constitutional
25 deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

26 ///

27 ///

28 ///

Here, Plaintiff fails to allege in his first claim how any individual defendant was involved in the alleged violation related to incorrect medication. Plaintiff states a nurse was involved in distributing the medication but does not identify that individual. See ECF No. 1 at 3. Furthermore, Plaintiff does not claim any connection between Defendants Mendez or Gibson and the alleged violation. See id. Plaintiff will be provided an opportunity to amend.

B. Medical Claim

The treatment a prisoner receives in prison and the conditions under which the prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan, 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when two requirements are met: (1) objectively, the official’s act or omission must be so serious such that it results in the denial of the minimal civilized measure of life’s necessities; and (2) subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison official must have a “sufficiently culpable mind.” See id.

Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental health needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is sufficiently serious if the failure to treat a prisoner’s condition could result in further significant injury or the “. . . unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994). Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition

1 is worthy of comment; (2) whether the condition significantly impacts the prisoner's daily
2 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See
3 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

4 The requirement of deliberate indifference is less stringent in medical needs cases
5 than in other Eighth Amendment contexts because the responsibility to provide inmates with
6 medical care does not generally conflict with competing penological concerns. See McGuckin,
7 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
8 decisions concerning medical needs. See Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.
9 1989). The complete denial of medical attention may constitute deliberate indifference. See
10 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical
11 treatment, or interference with medical treatment, may also constitute deliberate indifference. See
12 Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also demonstrate
13 that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

14 Negligence in diagnosing or treating a medical condition does not, however, give
15 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a
16 difference of opinion between the prisoner and medical providers concerning the appropriate
17 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,
18 90 F.3d 330, 332 (9th Cir. 1996).

19 Here, Plaintiff claims that he was given another inmate's medication. See ECF
20 No. 1 at 3. To plead a cognizable claim, Plaintiff must allege that the named defendants acted
21 unnecessarily and wantonly for purpose of inflicting harm. See Farmer, 511 U.S. at 834. An
22 error in providing medication suggests negligence and not deliberate indifference. To the extent
23 Plaintiff can allege additional facts to show an Eighth Amendment violation with respect to
24 medication, Plaintiff will be provided an opportunity to amend consistent with the standards
25 outlined above.

26 ///

27 ///

28 ///

1 **C. Harassment**

2 “[V]erbal harassment generally does not violate the Eighth Amendment.” Keenan
 3 v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996) (implying that harassment “calculated to . . . cause
 4 [the prisoner] psychological damage” might state an Eighth Amendment claim) (citing
 5 Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987)), amended by 135 F.3d 1318 (9th Cir.
 6 1998).

7 Plaintiff’s second claim alleges Defendant Mendez harassed and taunted him.
 8 This does not give rise to a cognizable violation of Plaintiff’s constitutional rights as it is unclear
 9 whether the harassment Plaintiff alleges was verbal or physical or whether the alleged harassment
 10 was calculated to cause psychological damage. Plaintiff will be provided an opportunity to allege
 11 additional facts in support of his harassment claim against Defendant Mendez.

12
 13 **III. CONCLUSION**

14 Because it is possible that the deficiencies identified in this order may be cured by
 15 amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire
 16 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
 17 informed that, as a general rule, an amended complaint supersedes the original complaint. See
 18 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
 19 amend, all claims alleged in the original complaint which are not alleged in the amended
 20 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
 21 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make
 22 Plaintiff’s amended complaint complete. See Local Rule 220. An amended complaint must be
 23 complete in itself without reference to any prior pleading. See id.

24 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
 25 conditions complained of have resulted in a deprivation of Plaintiff’s constitutional rights. See
 26 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
 27 each named defendant is involved, and must set forth some affirmative link or connection
 28 between each defendant’s actions and the claimed deprivation. See May v. Enomoto, 633 F.2d

164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Finally, Plaintiff is warned that failure to file an amended complaint within the time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b). See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's complaint is dismissed with leave to amend; and
2. Plaintiff shall file a first amended complaint within 30 days of the date of service of this order.

Dated: January 18, 2024



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE